

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

**LENETTE MARIE MAHAN**  
4900 Secluded Oaks Lane  
Carmichael, CA 95608

Registered Nurse License No. 480433

Respondent.

Case No. 2008 - 22

OAH No. 2007100503

**DECISION**

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on **January 2, 2010**

IT IS SO ORDERED this **2nd** day of **December, 2009**.



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS,  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

LENETTE MARIE MAHAN,  
a.k.a. LENETTE MAHAN

Registered Nurse License No. 480433

Respondent.

Case No. 2008-22

OAH No. 2007100503

**PROPOSED DECISION**

This matter was heard before Rebecca M. Westmore, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 24, 2009, in Sacramento, California.

Jessica M. Amgwerd, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H., R.N., Executive Officer, Board of Registered Nursing (board), Department of Consumer Affairs (department).

Joseph A. Welch, Attorney at Law, represented Lenette Marie Mahan (respondent).

Evidence was received on September 24, 2009. The record remained open to permit complainant to submit the citation to *Watson v. Superior Court*; respondent to submit a responsive brief; and complainant to submit a final reply. On September 24, 2009, complainant submitted *Watson v. Superior Court* (2009) \_\_ Cal.App.3d \_\_. Respondent did not submit a responsive brief, and complainant did not submit a final reply. The record was closed, and the matter was submitted on October 5, 2009.

**FACTUAL FINDINGS**

1. On August 31, 1992, the board issued Registered Nurse License Number 480433 to respondent. Respondent's license was in full force and effect at all times relevant to the charges set forth in the Accusation, and will expire on December 31, 2009, unless renewed or revoked.

2. On October 15, 2007, complainant filed the Accusation in her official capacity. Complainant seeks to revoke respondent's license based upon three driving under the influence convictions. At hearing, the Accusation was amended at page 4, line 6, as follows: "Subsection (c): On or about April 7, 2009, in the proceeding entitled *People v. Lenette Mahan*, Case No. 07204853, in Sacramento Superior Court, respondent pled nolo contendere to a violation of Vehicle Code section 23152(a)." Respondent did not object to this amendment.

3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq. Between January 24, 2008 and February 10, 2009, six continuance requests were granted due to the unavailability of respondent's counsel, and respondent's pending criminal proceeding.

#### *Respondent's Convictions*

4. On April 7, 2009, in Sacramento Superior Court Case No. 07T04853, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, with two prior violations,<sup>1</sup> a misdemeanor. Respondent's blood alcohol content (BAC) measured .12 percent. Imposition of sentencing was suspended, and respondent was placed on five years informal probation. The court sentenced respondent to serve 160 days in county jail, and ordered her to attend a four-week intensive outpatient program at Azure Acres Recovery Center, attend the 18-month SB 38 program, and pay \$2,421 in restitution fines and fees. Respondent's driver's license was revoked for three years. She was also designated as a Habitual Traffic Offender pursuant to Vehicle Code section 14601.3. Respondent can obtain her driver's license in April 2010 provided she installs an interlock device in her vehicle. Respondent's probation is scheduled to end in April 2014.

Respondent's conviction arose from her conduct on August 18, 2007, while she was sitting in her car with the engine running parked across two parking stalls in a Chevron gas station. California Highway Patrol (CHP) Officer Gorham observed that respondent's speech was "very slurred," and she was barely able to keep her head up. He instructed respondent to turn off her vehicle. Respondent indicated to Officer Gorham that "Juillo" from Chevron had driven her vehicle to that location. However, a check by Officer Gorham revealed that no one by the name of "Juillo" worked at the Chevron gas station.

5. On April 28, 2006, in Sacramento Superior Court Case No. 05T04938, respondent, on a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol, with a prior, a misdemeanor. Respondent's BAC measured .18/.19 percent. Imposition of sentencing was suspended and

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<sup>1</sup> The prior violations occurred on December 20, 1997 and October 15, 2005.

respondent was placed on four years informal probation. The court sentenced respondent to serve 10 days in county jail, and ordered her to enroll in the SB 38 Program for second offenders, and pay \$2,007.52 in restitution fines and fees. Respondent's conviction arose from her conduct on October 15, 2005.

6. On January 12, 1998, in Sacramento Superior Court Case No. 98T00018, respondent, upon a plea of nolo contendere, was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence, a misdemeanor. Respondent's BAC measured .11/.12 percent. Imposition of sentencing was suspended, and respondent was placed on three years informal probation. The court sentenced respondent to serve 48 hours in county jail, and ordered her to enroll in a Driving Under the Influence First Offender Program, attend the Victim Impact Panel, and pay \$1,401 in restitution fines and fees. Respondent's conviction arose from her conduct on December 20, 1997.

#### *Respondent's Licensee Questionnaire*

7. Laura Avila, a Senior Investigator with the Department's Division of Investigation (DOI), was assigned to investigate this matter. She met with respondent on October 10, 2006. Ms. Avila asked respondent to complete a Licensee Questionnaire. Question 4 of the Questionnaire states: "Since the date of your application for licensure, have you been convicted of a crime? If yes, please explain and provide dates and outcome." At hearing, Ms. Avila testified that respondent left this question blank until she pointed out that respondent had sustained two driving under the influence convictions in December 1997 and October 2005, at which time respondent changed her response. Question 5 of the Questionnaire states: "Are you presently on probation or parole? (If yes, explain and provide detailed information including parole officer's name and number)." Ms. Avila testified that respondent answered "No" to Question 5, but changed her answer to "Yes For DUI" during their interview.

8. At hearing, respondent testified that she completed Question 4 of the Questionnaire prior to her meeting with Ms. Avila. Respondent also asserted that she did not intend to mislead the department when she answered "No" to Question 5, but she was confused about whether she was convicted of a felony and did not feel she needed to disclose it. However, Question 5 does not delineate between misdemeanor and felony convictions. On cross-examination, respondent stated that she misread Question 5 to mean formal probation, and because she was on informal probation, she stated "No," until it was explained to her by Ms. Avila.

9. Ms. Avila's testimony regarding the incomplete questionnaire is credible. By leaving Question 4 blank and denying Question 5 until she was questioned by Ms. Avila, respondent was attempting to avoid disclosing two past criminal convictions for driving under the influence.

10. On October 13, 2006, respondent submitted a Declaration to the department indicating the following:

In Oct '95 I was in the middle of a financially + emotionally draining separation from a 9 year relationship. I made a very poor judgement [sic] call when I drove after drinking alcohol. I take full responsibility and understand the negative consequences and potential injury I could've caused. It will never happen again. Not only have I been fulfilling [sic] the punishment mandated by the courts, which includes a weekly class for an 18month [sic] program of counseling + education; But [sic] I personally sought help to prevent further mistakes during this difficult time. I have been under the care of Dr. Ramon Ferrer MD of psychiatry who has counselled [sic] me throughout this past year. I have made great progress + am no longer overwhelmed by my separation. I am certain after this investigation is complete, it will be apparent that I have never went [sic] to work under the influence of alcohol, sent home for drinking, nor sent home for any reason. These false allegations are an attempt to personal revenge made by a co-worker who didn't get her way in my personal life. I have been employed by UC Davis in the MICU for 13+ years. I am very well respected by my peers, supervisors, and physicians. If needed, I can provide letters of reference to support my personal and professional conduct. I realize upon review, my two DUI's over the past 9 years would indicate an alcohol problem and potential harm to the public; However [sic] I assure you THIS IS NOT THE CASE! Nor does it accurately reflect my personal or professional character. I made a terrible mistake last Oct, but have been pro-active in taking measures to prevent such poor decision-making errors during times of crisis in my personal life. I value my career and know I am an asset to the MICU @ UCD. I assure you I do not have a drinking problem, nor will I ever receive another DUI. I thank you for your time and please let me know if you need any further information.  
[Emphasis in original.]

#### *Respondent's Toxicology Report*

11. On October 10, 2006, Ms. Avila also requested that respondent provide a urine sample. Respondent agreed to do so, but informed Ms. Avila that her sample would test positive because she had consumed a glass of wine with dinner the night before. Respondent's urine sample tested positive for Cannabinoids, more commonly referred to as marijuana.

12. On December 14, 2006, respondent submitted a Declaration to the department indicating the following:

I was very surprised my urinalysis tested positive for cannabinoids. Honestly, I did try marijuana two or three times years ago! I do not currently smoke/nor ingest marijuana; nor have I for several years now. There are only two possible ways my urine could be positive for it – that I am aware of. On Sept 15<sup>th</sup> I attended an Elton John concert – the people in front of me were smoking it – as I could smell it very strong, or; Sept 30<sup>th</sup> I attended a wedding reception with a friend. After asking questions + finding out my urine was positive for cannabinoids, I have since been told the cookies and brownies served had marijuana in them. I ate 1 brownie + two cookies, amongst other things there. I do not smoke marijuana and would be happy to submit another urine test to clear up this matter. Yes – I received a DUI in 2005; and yes – I have recently been taking a prescribed antidepressant (Lexapro); (along with Wellbutrin – as I am trying to quit smoking cigarettes + almost have done so.) I certainly do not minimize my DUI. I will never drink & drive again. It was a terrible thing and I have been paying dearly for it as mandated by the courts. I also have been proactive to making better decisions in times of stress by seeing a counselor + a psychiatrist. This last year has been very stressful to me as I went thru [sic] a separation & experienced financial hardship, had a traumatic death + then got my DUI. Unfortunately I disclosed my personal information to a co-worker who wants revenge because I do not want an intimate relationship. I am an excellent ICU RN. I do not have a substance abuse problem, and request to repeat my urinalysis + close this matter.  
[Emphasis in original.]

13. Respondent's explanations as to why she tested positive for marijuana were not credible. It is inconceivable that she could smell marijuana at a concert and retain it in her system for 25 days, or eat brownies and cookies at a wedding reception, and retain it in her system for 10 days, prior to her meeting with the department's investigator.

#### *Factors in Aggravation, Mitigation and Rehabilitation*

14. Respondent is 44 years old. She is not married and has no children. She has abused alcohol since 1983, and readily admitted at hearing that she has an alcohol abuse problem but is not an alcoholic. She asserted that she is dealing with her alcohol problem, and has it under control.

15. She attended a three-hour intensive outpatient program at Azure Acres every day from June 1, 2009 to July 8, 2009, and has participated in the Azure Acres Thursdays After Care program since July 9, 2009. Respondent currently attends Alcoholics Anonymous (AA) every day for one to three hours; "Women on Wednesdays" group in Carmichael; and her court-ordered SB 38 program every Tuesday. Respondent has also grown spiritually, and relies on her faith in God and her church family to deal with life's stresses. She believes she has learned not to react so quickly to her problems, and to figure out a plan. Respondent reports a sobriety date of May 30, 2009. She has had a sponsor for 12 weeks, and speaks to her by telephone every day. Respondent also looks to her parents and her religion for support. She completed her court-ordered home detention on September 18, 2009. Respondent asserted that "I will not drink on special occasions because I know my alcohol abuse can lead to alcoholism." She is dedicated to avoiding all mind-altering substances, including marijuana.

Respondent was employed by the University of California, Davis, Medical Center (UCDMC) from 1992 to February 7, 2009, when she became disabled due to a herniated disc at C5/C6. She currently takes 300 milligrams of Neurotin/Gabepentin three times a day. She hopes to return to work at UCDMC on November 15, 2009. There was no evidence to show that respondent's alcohol-related convictions affected her ability to care for her patients.

16. Kimberly A. Hardin, M.D., testified on respondent's behalf at hearing. Dr. Hardin has worked with respondent at UCDMC since 1996, and has never observed her under the influence. She describes respondent as "the best nurse in the Intensive Care Unit (ICU)."

17. Respondent submitted 12 letters of recommendation, which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).<sup>2</sup> In September 2003, then-Insurance Commissioner John Garamendi praised respondent for her "kind and skillful care of Liz." In 2006, Judy Hughes, R.N., praised respondent for "her professionalism and the emotional support" she provided to Ms. Hughes' patients' family members. Jayna Z. was thankful for the "love and excellent care" respondent provided to her niece.

In 2008, Nikky Chahon, R.N., M.S.N., and respondent's manager at UCDMC, described respondent as a stellar nurse who is enthusiastic and positive. Cathleen A. Madge, R.N., M.S.N., described respondent as "a strong and effective leader," and a "proactive caring patient advocate." Kimberly A. Hardin, M.D., M.S., FACC, FASSM, has known respondent for 12 years and worked with her at UCDMC. Dr. Hardin asserted that "I have truly found no other nurse who can handle emergent, life threatening situations and who also has the ability to practice the art of nursing to the level that LeNette can." Dr. Hardin believes you "can count on her for anything that pertains to the patients' care." Timothy E.

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<sup>2</sup> Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions ...."

Albertson, M.D., M.P.H., Ph.D., has known respondent for 15 years and described her as "always positive, professional, and at the highest level of care for her patients." Brian Morrissey, M.D., has worked with respondent for seven years, and described her care as reliable and thoughtful, and her manner as courteous and conscientious. Donna Getman-Webb was the mother of a patient in respondent's care. She described respondent as "one of the best nurses every assigned to my daughter in the 26 years we battled her disease," and was comforted by respondent's "skill, devotion and care." None of these authors acknowledged an awareness of respondent's criminal behavior.

Janine Tunnell, R.N., B.S.N., has known respondent since they attended nursing school 24 years ago, and acknowledged awareness of respondent's "wrong choices during a difficult time in her life." She described respondent as "an excellent leader in nursing research and education," with a "professional and compassionate bedside manner." Demetra Mantis, R.N., has known respondent for five years and is "aware of multiple personal and physical hardships" experienced by respondent. Ms. Mantis asserted that respondent's hardships "did not influence her ability to perform her duties at work," and described her as professional, caring and trustworthy.

Linda Lorden, R.N. has known respondent for 14 years as a friend and co-worker, and submitted an unsigned, undated letter of recommendation to the board. Ms. Lorden asserted that she has never suspected respondent of being under the influence of any substance, and has observed respondent "save lives" through her care of patients and their families. Ms. Lorden does not understand why respondent was slandered, and did not acknowledge an awareness of respondent's criminal history.

18. Respondent also submitted six certificates of achievement and completion which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d). In 1999/2000, respondent received a Certificate of Excellence Incentive Award from the University of California, Davis (UCD); on May 10, 2005, respondent received a Certificate of Appreciation for Outstanding Perceptor from UCD; on October 15, 2007, respondent successfully completed three courses through the National Center of Continuing Education: Managing the Psychiatric Crisis, Substance Abuse, and Confused about Confusion; between June 1, 2009 and July 8, 2009, respondent completed treatment and rehabilitation at Azure Acres Chemical Dependency Recovery Center.



19. The Board has set forth its criteria for rehabilitation in California Code of Regulations, title 16, section 1445.<sup>3</sup> Respondent has complied with few of the board's rehabilitation criteria. It is positive that she is participating in AA, Women on Wednesday, and Azure Acres After Care on Thursdays. But her consumption of alcohol as recently as May 2009, less than two months after her April 2009 conviction is troubling. Her 2009 driving under the influence conviction requires that she attend an 18-month alcohol rehabilitation program, which she has yet to complete.

20. It is respondent's burden to establish that she can be trusted to remain clean and sober. At hearing, respondent was candid about her alcohol abuse, and detailed her ongoing efforts to remain clean and sober. However, given her recent sobriety, her previous assertions in two declarations to the department that she would never drink and drive again, and the fact that she will be on probation until April 2014, respondent did not establish that she has been fully rehabilitated to justify allowing her to retain her registered nurse license, even on a probationary basis.

#### *Costs of Investigation and Enforcement*

21. Pursuant to Business and Professions Code section 125.3, complainant has requested costs of investigation and enforcement in the total amount of \$9,053. This total amount consists of the following:

a. Complainant submitted a Declaration of Investigative Costs, which requests \$3,412.50 for the Division of Investigation's (DOI) services. Business and Professions Code section 125.3, subdivision (c), permits a board seeking costs to submit a "certified copy of the actual costs." California Code of Regulations, title 1, section 1042, subdivision (b), provides that cost declarations must "contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." In addition, cost declarations must include or attach sufficient information to "describe the general tasks performed, the time spent on

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<sup>3</sup> California Code of Regulations, title 16, section 1445, subdivision (b), provides:

When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

each task and the hourly rate or other compensation for the service.” (Cal. Code Regs., tit. 1, § 1042, subd. (b)(2).) During the hearing, complainant did not submit a breakdown of the time spent by DOI staff on this matter and did not provide evidentiary support for DOI’s costs. Consequently, complainant’s “actual costs” for investigation, as required under Business and Professions Code section 125.3, subdivision (c), and California Code of Regulations, title 1, section 1042, are not reasonable and will not be awarded.

b. Complainant submitted a Certification of Prosecution Costs and the Declaration of the Deputy Attorney General, which request costs in the amount of \$5,640.50. Attached to the Deputy Attorney General’s Declaration is a printout of a Cost-of-Suit Summary and Matter Time Activity by Professional Type (Matter Time), which describes tasks performed by the Office of the Attorney General in the amount of \$5,640.50. In light of the description of the work performed and the nature of this case, the total amount requested by the Office of the Attorney General is reasonable.

22. At hearing, respondent testified that due to her unemployment, disability, outstanding bills, and losses sustained in the real estate market, she is unable to pay any of the costs requested. The requested costs are addressed in Legal Conclusion 7, below.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2671, subdivision (f), the board may discipline a registered nurse’s license if the nurse has been convicted of an “offense substantially related to the qualifications, functions, and duties of a registered nurse.” California Code of Regulations, title 16, subdivision 1444, provides that “a conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.” In *Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal.App.4th 757, 770, the court found that more than one misdemeanor conviction involving alcohol consumption has a logical connection to the fitness to practice medicine. As the court explained,

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician’s fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. ... Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the public, tends to undermine public confidence in and respect for the medical profession. (*Ibid.*)

Given the reasoning set forth in *Griffiths*, pursuant to California Code of Regulations, title 16, section 1444, respondent's three driving under the influence convictions are substantially related to the qualifications, functions, and duties of a registered nurse. They, therefore, constitute cause to discipline respondent's license under Business and Professions Code section 2761, subdivision (f).

2. Pursuant to Business and Professions Code section 2761, subdivision (a), the board may discipline a registered nurse's license if the nurse has engaged in unprofessional conduct. Business and Professions Code section 2762, subdivision (c), defines the term "unprofessional conduct" to include a conviction for a criminal offense involving the consumption of alcohol. Respondent's three convictions for driving under the influence of alcohol (Factual Findings 4 through 6) constitute cause to discipline her license under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (c).

3. Pursuant to Business and Professions Code section 2761, subdivision (a), the board may discipline a registered nurse's license if the nurse has engaged in unprofessional conduct. Business and Professions Code section 2762, subdivision (b), defines the term "unprofessional conduct" to include the use any controlled substance to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license. Respondent's use of marijuana (Factual Findings 11 through 13) constitute cause to discipline her license under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b).

4. Business and Professions Code section 2762, subdivision (b), defines "unprofessional conduct" to include the use of alcohol "to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license." Respondent's three convictions for driving under the influence of alcohol (Factual Findings 4 through 6) constitute cause to discipline her license under Business and Professions Code sections 2761, subdivision (a), and 2762, subdivision (b).

BOARD OF  
REGISTERED NURSES  
SACRAMENTO  
2009 OCT 12 PM 1:00  
REGISTERED NURSE  
SACRAMENTO

### *Fitness for Continued Licensure*

5. California Code of Regulations, title 16, section 1444.5, provides:

in reaching a decision on a disciplinary action under the Administrative Procedure Act ..., the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

6. Respondent was convicted of driving under the influence of alcohol in 1998, 2006, and 2009. Her BAC was .11/.12 in December 1997; 18/.19 percent in October 2005, more than two times the legal limit, and .12 percent in August 2007. Her criminal probation is not scheduled to end until 2014. She is to be commended for her current participation in AA, Azure Acres, Women on Wednesdays, and her court-ordered SB 38 program; however, she admitted to having a drink as recently as May 30, 2009. In addition, respondent misrepresented herself to the department when she completed the Licensee Questionnaire in October 2006, which casts doubt upon her ability to completely and accurately disclose information to the department and to the public in the future. (Factual Findings 7 through 10.) Furthermore, it is disquieting that on two occasions, in October 2006 and December 2006, respondent emphatically stated in a signed declaration to the department that she will not receive another DUI and "will never drink and drive again," only to do just that eight months later. It is too soon to determine if respondent has been sufficiently rehabilitated. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 ["Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole."].) More time is needed to evaluate respondent's rehabilitation in light of her 11-year history of alcohol abuse. Consequently, it would be against the public interest, safety and welfare to allow her to retain her registered nurse license.

### *Recoverable Costs*

7. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge

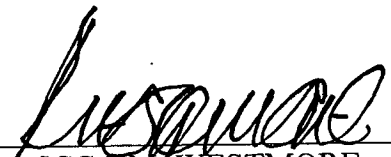
to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Findings 21 and 22, complainant submitted sufficient proof to establish that \$5,640.50 of the requested costs were reasonable. Respondent was not successful in getting any charges dismissed or reduced. She did not raise a colorable challenge to the proposed discipline. She did, however, assert that she is currently unemployed and unable to pay any of the requested costs. Because respondent is currently unable to pay any costs, complainant's request for costs in the amount of \$5,640.50 will be granted, but respondent will not be required to pay such costs unless and until her license is reinstated.

### ORDER

1. Registered Nurse License Number 480433 issued to respondent Lenette Marie Mahan, a.k.a. Lenette Mahan, is hereby REVOKED.
2. Respondent is hereby ordered to pay the Board of Registered Nursing \$5,640.50 as its reasonable costs for enforcement in this matter. This amount shall not be due and owing unless and until respondent's registered nurse license is reinstated.

DATED: October 7, 2009

  
REBECCA M. WESTMORE  
Administrative Law Judge  
Office of Administrative Hearings

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BOARD OF  
REGISTERED NURSING  
SACRAMENTO

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 JESSICA M. AMGWERD, State Bar No. 155757  
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7 Attorneys for Complainant

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9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2008 - 22*

13 LENETTE MARIE MAHAN,  
a.k.a. LENETTE MAHAN  
14 4900 Secluded Oaks Lane  
Carmichael, CA 95608

**A C C U S A T I O N**

15 Registered Nurse License No. 480433

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation  
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing  
22 ("Board"), Department of Consumer Affairs.

23 2. On or about August 31, 1992, the Board issued Registered Nurse License  
24 Number 480433 to Lenette Marie Mahan, also known as Lenette Mahan ("Respondent").  
25 Respondent's registered nurse license was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on December 31, 2007, unless renewed.  
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1 (c) Be convicted of a criminal offense involving the prescription,  
2 consumption, or self-administration of any of the substances described in  
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
4 record pertaining to, the substances described in subdivision (a) of this section, in  
5 which event the record of the conviction is conclusive evidence thereof. . .

6 7. Code section 2765 states:

7 A plea or verdict of guilty or a conviction following a plea of nolo  
8 contendere made to a charge substantially related to the qualifications, functions  
9 and duties of a registered nurse is deemed to be a conviction within the meaning  
10 of this article. The board may order the license or certificate suspended or revoked,  
11 or may decline to issue a license or certificate, when the time for appeal has elapsed,  
12 or the judgment of conviction has been affirmed on appeal or when an order  
13 granting probation is made suspending the imposition of sentence, irrespective of  
14 a subsequent order under the provisions of Section 1203.4 of the Penal Code  
15 allowing such person to withdraw his or her plea of guilty and to enter a plea of  
16 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
17 information or indictment.

#### 18 COST RECOVERY

19 8. Code section 125.3 provides, in pertinent part, that the Board may request  
20 the administrative law judge to direct a licensee found to have committed a violation or  
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
22 investigation.

#### 23 CONTROLLED SUBSTANCE AT ISSUE

24 9. "Marijuana" is a Schedule I controlled substance as designated by Health  
25 and Safety Code section 11054, subdivision (d)(13).

#### 26 FIRST CAUSE FOR DISCIPLINE

##### 27 (Criminal Convictions)

28 10. Respondent is subject to disciplinary action pursuant to Code section  
29 2761, subdivision (f), in that she was convicted of crimes which are substantially related to the  
30 qualifications, functions, and duties of a registered nurse, as follows:

31 a. On or about January 12, 1998, in the criminal proceeding titled *People v.*  
32 *Lenette Marie Mahan* (Super. Ct. Sacramento County, 1998, No. 98T00018), Respondent was  
33 convicted by the Court on her plea of nolo contendere to one misdemeanor count in violation of  
34 Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs).  
35 The incident upon which the conviction is based occurred on approximately December 20, 1997.



1                   b.       On or about April 28, 2006, in the criminal proceeding titled *People v.*  
2 *Lenette Marie Mahan* (Super. Ct. Sacramento County, 2006, No. 05T04938), Respondent was  
3 convicted by the Court on her plea of nolo contendere to one misdemeanor count in violation of  
4 Vehicle Code section 23152<sup>1/</sup>, subdivision (a) (driving under the influence of alcohol or drugs).  
5 The incident upon which the conviction is based occurred on approximately October 15, 2005.

6                                   **SECOND CAUSE FOR DISCIPLINE**

7                                   **(Use of Alcoholic Beverages to an Extent**  
8 **or in a Manner Dangerous or Injurious to Others)**

9                   11.       Respondent is subject to disciplinary action pursuant to Code  
10 section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code  
11 section 2762, subdivision (b). On or about December 20, 1997, and October 15, 2005,  
12 Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to  
13 herself, others, and the public, as set forth in paragraph 10 above.

14                                   **THIRD CAUSE FOR DISCIPLINE**

15                                   **(Convictions Related to the**  
16 **Consumption of Alcoholic Beverages)**

17                   12.       Respondent is subject to disciplinary action pursuant to Code  
18 section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code  
19 section 2762, subdivision (c). On or about January 12, 1998, and April 28, 2006, Respondent  
20 was convicted of criminal offenses involving the consumption of alcoholic beverages, as set forth  
21 in paragraph 10 above.

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27                   1. Respondent's plea also included an admission that the current offense occurred within ten years of a  
28 separate violation of Section 23152, subdivision (a), of the Vehicle Code, which separate violation occurred on or  
about December 20, 1997, and which resulted in a conviction.

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**FOURTH CAUSE FOR DISCIPLINE**

**(Self-Administration of a Controlled Substance)**

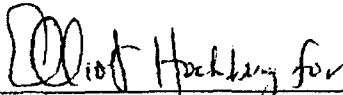
13. Respondent is subject to disciplinary action pursuant to Code Section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that she self-administered the controlled substance Marijuana without lawful authority therefor, as follows: On or about October 10, 2006, Respondent voluntarily submitted a urine specimen for drug testing, as requested by Laura Avila, Senior Investigator with the Division of Investigation, Department of Consumer Affairs. Respondent tested positive for Marijuana.

**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 480433, issued to Lenette Marie Mahan, also known as Lenette Mahan;
2. Ordering Lenette Marie Mahan, also known as Lenette Mahan, to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/10/07

  
RUTH ANN TERRY, M.P.H., R.N.  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant